Findings, together with the copies of the statements of the witnesses heard by the Board of Inquiry, were sent to the Adjudicating Officer in what was considered to be the normal course of procedure. I would only add that, in view of the very serious Findings by the Board of Inquiry and its clear conclusions that the plaintiff was a thoroughly unscrupulous Police Officer and, by necessary implication, wholly unfit to remain a member of the Federation of Malaya Police Force, it is with the greatest possible regret that I have arrived at my conclusions in this case.

17. There remains one last matter which I should more logically have dealt with at the commencement of this judgment, namely, whether this Court has any jurisdiction to entertain these proceedings in the form in which they are before it, or whether the plaintiff's remedy, if any, is not by way of *certiorari* proceedings.

As Mr. Jag-Jit Singh has pointed out, the plaintiff's Statement of Claim in this case closely approximates the claim of the plaintiff in the case of the *High Commissioner for India* v. *I. M. Lall* already cited. In that case Their Lordships of the Privy Council, by their decision, approved the order of the High Court granting a declaration that the purported dismissal of the plaintiff was wrongful, void, illegal and inoperative and that the plaintiff was still a member of the Indian Civil Service.

In the later case of *N. W. F. Province* v. *Suraj Narain*,[3] the Privy Council again upheld the decision of the Federal Court of India granting a declaration that the dismissal of the plaintiff, a Sub-Inspector of Police, was void and inoperative.

In the case of *Cooper* v. *Wilson*,[4] the plaintiff, a Sergeant in the Liverpool Police Force, claimed a declaration that he had not been validly dismissed from the Force, but that he had duly resigned and was in consequence entitled to be repaid certain moneys that had been deducted from his pay. In considering the argument that, even assuming his dismissal was unauthorised, which was denied, the plaintiff's remedy was to appeal to the Secretary of State, or alternatively, to apply by way of *certiorari* to quash the order of dismissal, Greer L.J. stated in the course of his judgment, at page 321:—

> "It would be idle for a plaintiff who is alleging that he has never been dismissed to appeal to the Secretary of State, nor do I think that the fact that that is a remedy which he could take prohibits his access to the Court for a declaration that his dismissal was invalid, nor do I think that the power which he undoubtedly possessed of obtaining a writ of *certiorari* to quash the order for his dismissal prevents his application to the Court for a declaration as to the invalidity of the order of dismissal".

He then went on to say that the powers of the Court to grant declarations had been greatly extended in recent years.

Again, in the case of *Barnard & Ors.* v. *National Dock Labour Board & Anor.*,[5] the Court of Appeal held that the High Court had the power to make a declaration relating to the validity of the decision of a statutory tribunal. In the course of his judgment Denning L.J. said, at page 1119:—

> "This is not a case of a tribunal which has a lawful jurisdiction and exercises it; it is a case of a man acting as a tribunal when he has no right to do so. These Courts have always had jurisdiction to deal with such a case".

Lastly, I would refer to the case of *Healey* v. *Minister of Health*,[6] where Denning L.J., referring to *Barnard's case* cited above, went on to say, at page 227:—

> "I take it to be clear that the Queen's Courts can grant declarations by which they pronounce on the validity or invalidity of the proceedings of statutory tribunals".

For these reasons I am of the opinion that the plaintiff is entitled to succeed in this action. There must accordingly be a declaration for the plaintiff in the terms as prayed in paragraph (1) of the Prayer in his Statement of Claim, together with an order as prayed that an account be taken of the moneys due to the plaintiff in respect of his salary and all other emoluments found to be due to him as an Inspector of the Federation of Malaya Police Force as from the 7th day of July, 1958, to the date of payment, and an order for such payment to be made of such sum due after the taking of such account. The matter will be remitted to the learned Senior Assistant Registrar for such account to be taken. The defendants must pay the plaintiff's costs of this action.

Judgment for the plaintiff.

CHIA SAU YIN v. LIEW KWEE SAM

[C. A. (Thomson C.J., Syed Sheh Barakbah and Neal JJ.) May 26, 1959]

[K. L. — Civil Appeal No. 59 of 1958]

Partnership — Licensed rubber dealers' business — Whether all partners required to be licensed as rubber dealers.

Rubber Supervision Enactment, 1937 (F.M.S.) ss.5 (i) and 17(i) — Principal object of the Enactment — Interpretation — Revenue law — Breach of.

This is an appeal from a decision of Smith J., reported in [1959] M.L.J. 83.

The basic facts of the case were not in dispute. Before the war one Yap was carrying on business as a rubber dealer under the name of Tong Seng Rubber Company. After the war he resumed business and at all material times had held a licence to purchase rubber under section 5 of the Rubber Supervision Enactment for himself alone trading under the name of Tong Seng Rubber Company. On January 14, 1946, he took in eight other partners, who according to the terms of the partnership agreement were sleeping partners. Accordingly, when it became necessary to apply for renewal of the rubber dealer's licence the first defendant applied in his own name indicating that he was trading as the Rubber Company, but did not disclose the fact that he had eight sleeping partners. This state of affairs

continued down to 1951. The respondent (plaintiff) was aware that Yap had a rubber dealer's licence but that he did not know and took no steps to ascertain whether any of his partners' names were included in the licence but he presumed that Yap represented all the partners. The respondent also said that the appellant (2nd defendant in the case) did not tell him that he was retiring from the partnership.

The respondent brought an action claiming against the alleged partners of a rubber dealers' business for the sum of $5,097.42 due on an account for rubber sold and delivered to the alleged firm.

Under section 5 of the Rubber Supervision Enactment all persons purchasing rubber must be licensed, and section 17(i) of the same Enactment provides that when two or more persons are in partnership it is not necessary for each of them to have a separate licence but that the name of each partner shall be included in the licence.

In the Court below it was held that since all the partners were not named in the licence, the partnership was not properly licensed under the Enactment. However, that breach should be regarded in the same way as breach of a revenue statute and that the plaintiff should not be regarded as *particeps criminis* and was therefore entitled to recover against all members of the partnership. On appeal,

Held: (1) when rubber was sold it was sold to and bought by Yap as a partner and as agent of the other partners, with a resulting joint obligation on the part of them all to pay for it. When the rubber was delivered to Yap it became the joint property of the partners;

(2) on the question of illegality, section 5 of the Enactment read "No person shall purchase . . . rubber . . . unless . . . duly licensed." This statute is completely silent on questions as to how a purchaser of rubber obtains his capital. Since the actual purchaser is licensed, the object of the statute is therefore not defeated. On this view the fact that the purchaser is an agent or has entered into an agreement of partnership with other persons providing for the sharing with them of profits is wholly irrelevant;

(3) the object of section 17 of the Enactment is to mitigate and provide that where 2 persons are carrying on business in partnership one licence is sufficient and enables each of the partners named in it to purchase rubber. In the present case, however, there was no question of 2 or more persons purchasing rubber. If rubber had been purchased by any other partner then unless he held a licence of his own or was included in a joint licence issued under section 17 the transaction might well have been prohibited by law and be illegal.

Cases referred to:—

(1) *Brown* v. *Duncan* 109 E.R. 385.

(2) *South Wales Atlantic Steamship Company* L.R. 2 Ch. D. 763.

(3) *Syn Thong & Co.* v. *Tong Joo (Hoo) & Co.* [1929] S.S.L.R. 39, 44.

(4) *Gordhandas Kessowji* v. *Champsey Dossa & Ors.* A.I.R. 1921 P.C. 137.

COURT OF APPEAL. Appeal from the judgment of Smith J. reported in [1959] M.L.J. 83.

Dato Sir Roland Braddell (*R. Ramani* with him) for the appellant.

R. R. Chelliah (*Balwant Singh* with him) for the respondent.

Thomson C.J.: This is an appeal from a decision of Smith J., which raises a question as to the effect of the Rubber Supervision Enactment, No: 10 of 1937.

There has never been any real controversy as to the facts which may most conveniently be stated historically.

Before the war one Yap was carrying on business as a rubber dealer at 27, Jalan Tuan Sheikh, Seremban, under the name of Tong Seng Rubber Company. After the war he resumed business and at all material times he has held a licence to purchase rubber under section 5 of the Rubber Supervision Enactment issued to himself personally and stating that he trades under the style of Tong Seng Rubber Company.

When he resumed business Yap was apparently short of working capital and on 14th January, 1946, he entered into an agreement of partnership with eight other persons including the present appellant which was duly registered under the Registration of Businesses Ordinance. That agreement recited that Yap was the holder of a rubber dealer's licence and provided that the partners should carry on the business of rubber dealers under the style or firm name of Tong Seng Rubber Company at the premises already occupied for that purpose by Yap. It provided for the distribution of profits in proportion to the capital contributed by the partners and it provided that the partnership business should be managed by Yap who was to be paid a monthly salary of $120 and 6% of the net profits in addition to his share in those profits based on his share in the capital and who as manager was to call a meeting of the partners once every six months.

From time to time one Liew sold rubber to the firm and from time to time he received payments in respect of this rubber, but on 13th June, 1951, there was owing to him for rubber supplied a balance of $5,097. He was unable to obtain payment of this balance and accordingly on 30th July, 1951, he commenced proceedings to recover it.

By this time a number of the original partners had withdrawn from the firm and in fact, although Liew was not aware of this and had had no intimation of it, the present appellant had withdrawn on 12th June, the day before the last delivery of rubber involved in the account had been made. The proceedings, therefore, were brought against Yap, the present appellant and two of the other partners, Eng and Ang. Ang was out of the jurisdiction and was never served. Yap and Eng submitted to judgment. The appellant, however, denied liability. He did not attempt to rely on the fact that he had ceased to be a partner, and indeed he could not do so because it was admitted that the plaintiff knew he was a partner and had had no intimation of his withdrawal. His defence was that in effect both the partnership and any contracts made with it were illegal as being forbidden by the provisions of the Rubber Supervision Enactment and that therefore the plaintiff could not recover.

The trial Judge came to the conclusion that, because all the partners were not named in the licence issued under the Rubber Supervision Enactment, the partnership was not properly licensed under that Enactment. He was of the opinion, however, that breach of that Enactment should be regarded in the same way as breach

of a revenue statute and that having regard to the case of *Brown* v. *Duncan*[1] the plaintiff should not be regarded as *particeps criminis* and was therefore entitled to recover against all members of the partnership. If he was wrong in this view he thought that it was expecting too much to ask that every person who sells rubber should inspect the dealer's licence and then, if he finds that the dealer trades under a name other than his own, be obliged to make an inquiry at the Business Names Registry to discover whether or not there are any partners. The plaintiff had satisfied himself that the person with whom he was actually dealing was licensed and therefore could not be said to be *in pari delicto* with the partners. In that view he was fortified by certain observations by Mellish L.J., in the case of *South Wales Atlantic Steamship Company*.[2] He accordingly held that the plaintiff was entitled to recover as against the appellant.

It is against that decision that the appellant has now appealed.

At this point I will return for a moment to the facts. As regards the partners it has never been in question that the only licence to purchase rubber was issued to Yap whose name was on it and who was described as trading under the style of Tong Seng Rubber Company. Nor is there any suggestion that so far as Yap was concerned there was any breach of the provisions of the Enactment. His licence was displayed at the premises as required by law and again as required by law the premises exhibited a signboard with his name and a statement that he was a licensed rubber dealer. Records were kept by him as required and the necessary receipts for rubber were given by him in the statutory form.

As regards the plaintiff, he had known Yap and had dealt with him for a long time and he frankly admitted that he knew he had partners who were supporting him financially, and that he knew the appellant was one of them. He knew that he could only sell to a licensed dealer but he knew that Yap was licensed and in the circumstances did not realise (nor did he admit) that there was anything unlawful in dealing with him.

The Rubber Supervision Enactment, 1937, is entitled "an Enactment to consolidate and amend the law relating to the supervision of dealings in rubber and of statistics concerning rubber cultivation . . . . .". It provides for the setting up of Licensing Boards and Licensing Officers who may grant licences relating to rubber and provides (section 5) that subject to certain exceptions "no person shall purchase, treat or store rubber or pack rubber for export unless he shall have been duly licensed" in that behalf. Such licences (section 16) are valid only for the places and purposes specified in them; they are not assignable; and they are personal to the holder, lapsing on his death, mental disorder or bankruptcy. Licensees may be required to give security for the observance of the conditions of their licences (section 15) and are liable for any contravention of the Enactment by their agents or servants (section 18). There are provisions for the inspection of premises mentioned in licences which (section 19) must bear a conspicuous sign to the effect that the premises are licensed and must have the licence conspicuously exhibited. There are also provisions for the keeping of records and for the giving of receipts for rubber in prescribed forms.

Section 17 provides that:—

> "Two or more persons carrying on business in partnership shall not be obliged to obtain more than one licence appropriate to the circumstances in respect of which the licence is issued."

But it is perhaps significant that there is no provision in terms for the licensing of a limited liability company and in view of the provision under section 16(iii) that a licence lapses on the mental disorder of the licensee the licensing of a limited company does not seem to be contemplated.

It is not necessary to embark on an inquiry to arrive at an exhaustive list of the purposes of this Enactment. One purpose clearly is to ensure that all dealings in rubber are carried out in such a way as to be capable of inspection and supervision of public officers. As it was put by Stevens J., in the case of *Syn Thong & Co.* v. *Tong Joo (Hoo) & Co.*[3]:—

> "its object is to enable the Government to keep in touch with all dealings in that commodity by compelling dealers to store their rubber only in specially licensed premises, and to furnish information as to the origin and destination of every lot of rubber which forms the subject of a sale."

Again it is clear from the provisions of the Enactment that licences may be granted or withdrawn in the entire discretion of Licensing Boards that another object is to ensure that only persons of good character engage in dealing in rubber. Clearly one object of the provisions is to protect to some extent the very large revenue the country derives from rubber but in my opinion they go further than this and for myself I would be quite prepared to accept Sir Roland Braddell's view that they are intended to ensure the orderly carrying on of an industry on which the prosperity of the country is to some extent dependent.

It seems important to observe, however, that the Enactment seeks to attain this end by regulating actual dealings in rubber, and not to go behind the face of such dealings. In particular, and I am not forgetting section 17 to which I shall return, there is not a word in the Enactment that relates to the way in which a rubber dealer obtains his working capital. He may trade with his own money or he may trade with borrowed money and it is difficult, though of course not impossible, to distinguish for the purpose of the objects of the Enactment between the case where he trades with borrowed money for which he pays a fixed rate of interest and a case where, as here, he takes in sleeping partners who have no share in the management but who are remunerated by a share in profits.

In the present case there is no question that any of the partners except Yap had any dealings of any sort with the plaintiff or any other vendor of rubber. It is clear too that it was not contemplated by the partners that any of them except Yap should have the conduct of such dealings. In the circumstances it is important to be clear as to the legal nature of these dealings. It is very probable that the plaintiff and indeed other vendors of rubber thought they were selling to the firm and it is equally probable that Yap and the other partners thought that it was the firm that was buying the rubber. This, however, is no more than an example of the legal error that is so prolific of litigation in this country that a partnership firm has a legal existence as distinct from that of the partners composing it. Putting aside for the moment the question of illegality what actually happened when rubber was sold was that it was sold to and bought by Yap as a partner and as agent of the other partners, with a resulting joint obligation on the part of them all to pay for it. When the rubber was delivered to Yap it became the joint property of the partners.

The question of illegality then reduces itself to the question of whether such dealings as took place in the present case were prohibited by the Rubber Supervision Enactment. If they were, the contract between the partners to engage in them and therefore the partnership were unlawful. Again in that event the contracts of sale into which Yap entered with vendors of rubber were prohibited by law and could not be sued upon.

If these contracts were prohibited by law it could only be by reason of section 5 of the Enactment. "No person shall purchase . . . . rubber . . . . unless . . . . duly licensed." On the face of it the answer to the question "Who purchased the rubber?" is "Yap purchased the rubber". And Yap was duly licensed. It is true that by reason of the partnership agreement what he did produce certain legal results as to the property in the rubber and the obligation to pay for it. Nevertheless I am not prepared to think that these results can be held to make illegal purchases which on the face of them were not prohibited by the statute. As has been said, the statute is completely silent on such questions as to how a purchaser of rubber obtains his capital. It is completely silent as to how he deals with the property in the rubber after he has purchased it except that, presumably, if he sells it to some other party who is not licensed he abets the commitment of an offence by that other party. In certain circumstances it may be that the expression "purchase" should be interpreted as connoting and including all the legal consequences which arise by reason of external circumstances from any individual purchase. Here, however, having regard to the object and contents of the statute it would in my view be wrong to put such a wide interpretation on the expression. It is clearly one object of the statute to ensure that dealings in rubber are conducted in such a way as to ensure publicity and thereby facilitate inspection by public officers. Another is to ensure that liability for compliance with these measures can be definitely and clearly fixed on the shoulders of a person licensed by the authorities, who has when necessary given security and whom the authorities are satisfied is a suitable person. If any person purchases rubber who has no licence then these objects are defeated. If, however, the actual purchaser is licensed it seems to me that the object of the statute is not defeated and that the purchase is not prohibited. On this view the fact that the purchaser is an agent or has entered into an agreement of partnership with other persons providing for the sharing with them of profits is wholly irrelevant.

That would be the end of the matter if it were not for the provisions of section 17 on which the main argument for the appellant has been based.

That section has already been quoted and it is important to observe that it is the only section in the statute which makes any reference to persons carrying on business in partnership. Nowhere is it said that it is forbidden for persons carrying on business in partnership to deal in rubber. What it does say is that no person shall purchase rubber unless he is licensed. Clearly where two persons each purchase rubber each of them would have to be the holder of a licence and the consideration that they happen to be carrying on the business in partnership would be irrelevant and would not excuse either of them from the obligation to hold a licence. All that section 17 does, to my mind, is to mitigate that and provide that where two persons are carrying on business in partnership one licence is sufficient and enables each of the partners named in it to purchase rubber. In the present case, however, there was no question of two or more persons purchasing rubber. The only person who purchased rubber was Yap. If rubber had been purchased by any other partner then unless he held a licence of his own or was included in a joint licence issued under section 17 the transaction might well have been prohibited by law and is illegal. There was, however, no suggestion of any such transaction being either carried out or indeed contemplated.

In all the circumstances of the case I would dismiss the appeal with costs.

Syed Sheh Barakbah J.: I have had the advantage of reading the judgment of the learned President with which I entirely agree. I have nothing to add.

Neal J.: I have had the opportunity of reading the Judgment of the learned Chief Justice and I agree that this appeal must be dismissed. My reasons for so agreeing are that in my opinion the partnership in this case was not an unlawful partnership nor was the contract an unlawful contract as pleaded nor in my opinion was either the partnership or the specific contract of such a nature that it would

defeat the provisions of the Rubber Supervision Enactment.

If one examines the provisions of the Rubber Supervision Enactment one finds in section 5(i), "no person shall purchase, treat, or store rubber or pack rubber for export unless he shall have been duly licensed in that behalf under this Enactment." Sub-section (ii) of section 5 provides, *inter alia*, that every licence shall be in the prescribed form, and it is to be noted, as Sir Roland Braddell pointed out during the hearing, that the prescribed form provides for the names of the partners being included in the licence where there is a partnership.

The next relevant provisions for consideration are the terms of section 16(ii) and (iii) which provide that no licence shall be assignable and that a licence is personal. To halt at this stage it is obvious that since the singular always includes the plural (see item 95 section 2(1), Interpretation and General Clauses Ordinance 7 of 1948) and because of the prescribed form under section 5(ii), if nothing more was said in the Enactment the contention of the Appellant would be correct that a licence in respect of a partnership business must include the names of all the partners. It is also in my opinion important to note at this stage that, having regard to the provisions to which I have referred, no further or additional provision needed to be made to enable a partnership to be licensed under a licence covering the names of all of the partners. So it follows in my opinion that section 17(i) is completely unnecessary if it went no further than submitted on behalf of the appellant and held by the learned Judge in the Court below.

Section 17(i) reads:

> "Two or more persons carrying on business in partnership shall not be obliged to obtain more than one licence appropriate to the circumstances in respect of which the licence is issued, and a licence to two or more persons shall not be determined by the death or retirement from business of any one or more of the partners."

In addition to the fact that section 17(i) was unnecessary if it meant that all of the partners had to be named in the licence there is support, and I think strong support, for the view that I have taken in the wording of section 17(i) and in particular the following words, "appropriate to the circumstances in respect of which the licence is issued". Those words must be given some meaning. In my opinion they can refer to only two things, (1) the terms of the partnership and (2) the type of licence, that is to say purchase, storage or packing, etc.

Dealing with the second alternative first, having regard to the definition of the term "licence" the phraseology used elsewhere in the Enactment and the actual wording in section 17(i), I have reached the conclusion that the Legislature was referring not to the type of licence but to details of the partnership. I have read and considered at length the reasons given by the Trial Judge for holding that section 17 does not enable one or more partners to hold licences in respect of a partnership business between the licensed partner or partners and sleeping partners. The learned Trial Judge has based his opinion on the reasoning that the contrary would enable a licensed partner to take in as a sleeping partner a person who has been refused a licence and this would be in breach of the intention of the Legislature. To my mind the learned Trial Judge has read more into the particular section than he was justified on a reading of the whole of the Enactment in doing. There is nothing in the Enactment to support the suggestion that the Legislature intended to prohibit a man who was refused a licence from having anything to do with a licensed business. This is evident if you consider the wording of section 18. If the intention of the Legislature had been as suggested by the learned Trial Judge, then that intention was negatived completely by the failure of the Legislature to in any way limit the word "agent". I based the opinion that I have come to on the meaning of section 17(i) having regard only to the sections that preceded it, but I find further support for it in at least one subsequent section. In section 18, whilst the draftsmanship of this Section leaves much to be desired, it seems to me that there can only be three types of agent, namely,

1. Partners.
2. Agents selling on commission or otherwise.
3. Holders of Powers of Attorney.

It seems to me that section 16 (ii) and (iii) rule out commission agents and holders of powers of attorney leaving the only type of agency permissible under the Enactment, viz. a partner. Now, if all the partners have to be as submitted on behalf of the appellant named in the licence, then having regard to the offences which are covered by section 18, there was no need for the inclusion of the word "agent" at all because there cannot, if the submission of the appellant is correct, be an agent who would not be liable to be punished as the actual holder of the licence.

Again, although I reached my decision apart from relying upon it my decision is in my opinion supported by the statement of the Privy Council in the case of *Gordhandas Kessowji* v. *Champsey Dossa & Ors.* [4] when the Privy Council approved the statement of the law that a licensee entering into partnership with certain other persons sharing in the profits thereof did not contravene the enactment rendering assignment of a licence unlawful. I have not relied upon that decision in deciding this case as I have not been able to obtain either a copy of the Bombay Salt Act (11 of 1890) or the reports of the case in the Courts below the Privy Council to enable me to decide how far I could take this statement of the law. I have preferred to rely upon what to my mind is the clear wording and intention of the Enactment.

Appeal dismissed.

Solicitors: *Braddell & Ramani; Balwant Singh.*